

## **SECTION 8.0 SPECIAL RESIDENTIAL REGULATIONS**

### **8.1 ACCESSORY APARTMENTS**

**8.1.1** Special Permit Required. Subject to satisfying the Standards set forth in Section 8.1.2, the addition of an Accessory Apartment to a single family home may be permitted by the issuance of a Special Permit.

**8.1.2 Standards.** The standards set forth below shall be fulfilled prior to the granting of a Special Permit.

1. The owner of the property shall occupy one of the living units, and the other living unit can only be occupied by a family member specified in the Special Permit. All dimensional yard requirements (see Section 4.0 of these By-Laws) shall be met or relief from such granted. This shall apply to the existing structure and any proposed additions.
2. Any external changes or additions shall blend into the architectural and physical style of the existing structure to the satisfaction of the Planning Board. The Accessory Apartment shall share a common living area separation (wall or floor) with the principal unit and there shall be direct access between the units. The structure shall retain the visual appearance of a single family dwelling when viewed from the front yard(s).
3. The net floor area for the Accessory Apartment shall not exceed eight hundred fifty (850) square feet.
4. Adequate parking for two additional vehicles shall be provided. Said parking shall not be obtrusive and shall comply with all zoning regulations. It shall also be screened, if required by the Planning Board.
5. The Planning Board reserves the right to require screening between any addition(s) and immediate abutters. Landscaping for any new addition(s) may also be required.
6. All necessary state and local permits and requirements shall be adhered to and shall not compromise any of these regulations.
7. The utilities serving the additional unit shall not be separated from the primary home.
8. For conforming lots or structures within the Water Resource Protection Overlay District, the design sewage flow does not exceed the design sewage flow requirements established by Section 9.4 for the Zone II and Zone III of the Water Resource Protection Overlay District.
9. For pre-existing non-conforming lots or structures located in Zone II or Zone III of the Water Resource Protection Overlay District, an accessory apartment may be allowed provided there is not an increase in the number of bedrooms on the property. The existing septic system must pass a Title 5 inspection, or the system upgraded as approved by the Board of Health.

## **8.2 RESIDENTIAL COMPOUNDS**

**8.2.1 Purpose.** The purpose of this Section 8.2 is:

1. To govern the subdivision of land within the R-40 Residential and Agricultural District into not more than four (4) lots,
2. To require a lower density of housing on the site than is normally allowed with a conventional subdivision,
3. To eliminate the Town's costs for road maintenance, lighting and future rebuilding and,
4. To minimize construction in or near environmentally sensitive areas.

**8.2.2 Special Permit Required.** A Residential Compound may only be authorized under a Special Permit granted by the Planning Board. Subdivision approval, pursuant to Massachusetts General Laws, Chapter 41, Section 81K-81GG, also shall be required.

**8.2.3 Private Ways.** All access ways shall be privately owned and shall remain as such.

1. All maintenance, including snow removal, street lighting, repaving and similar activities shall be the responsibility of the abutters to the private way.
2. The applicant shall propose the method to be used to ensure that the private way shall remain privately owned and that the abutters shall remain responsible for its maintenance (i.e. a home owner's association or similar entity should be considered).

**8.2.4 Water Resource Protection Overlay District.** All lots shall exceed the minimum requirement of 40,000 square feet or 60,000 square feet if the lot is within the WRPOD.

**8.2.5 Standards.**

1. The total number of lots shall be less than the number of lots allowed in a conventional subdivision of the land.
2. In granting the Special Permit, the Planning Board may authorize a reduction in lot frontage. The lot frontage may be reduced to fifty (50) feet on a public way (existing or proposed). The intent is to create better-shaped lots and to eliminate "strips" of useless frontage.
3. The Planning Board has the authority to impose construction standards found in its subdivision regulations. However, it also has the discretion to waive/reduce the following standards in exchange for the required reduction in density within the subdivision and/or other public amenities: underground utilities; sidewalk requirements; pavement widths; cul-de-sac width and construction; berms; and drainage.
4. All private ways shall have a fire hydrant located pursuant to the Board of Water & Sewer Commissioners requirements, which hydrant shall be owned and maintained by the Town.

5. No future extension of the access road is permitted unless there is adherence to the provisions of Massachusetts General Laws, Chapter 81, Section 81W.

#### **8.2.6 Application Process.**

1. A pre-application preliminary/concept plan review and hearing with the Planning Board is required. The intent is to allow the Planning Board the opportunity to review the proposal prior to the Special Permit process, and to allow the Planning Board to familiarize the applicant with the submittal/review process.
2. Eleven (11) stamped copies of a preliminary set of plans shall be submitted to the Planning Board. The plans shall illustrate the proposed building lots and shall conform to Section 3.01 of the Foxborough Subdivision Regulations. Such plans shall be prepared and stamped by a registered, professional engineer or surveyor.
3. A list of requested waivers pursuant to the Foxborough Subdivision Regulations shall be submitted.
4. The Planning Board shall hold a public hearing within twenty-five (25) days from the date of submittal and shall vote on such within twenty (20) days after the hearing.
5. If the Planning Board approves the preliminary concept plan, the Planning Board, insofar as practical under the law, may allow the submittal of a combined Special Permit and definitive subdivision plan. A combined submission will not be authorized in those cases where the Planning Board disapproves the preliminary/concept plan.

#### **8.2.7 Contents of the Special Permit Application.** The Special Permit application to construct a Residential Compound, accompanied by eleven (11) copies, shall include a plan prepared in accordance with the requirements for a definitive subdivision plan as set forth in Section 3.02 of the Foxborough Subdivision Regulations. Final approvals will include definitive subdivision approval, and a special permit. At a minimum the applicant shall include the following information.

1. Documentation which shall be used to create a Homeowner's Association or similar entity to own and maintain the private way once the developer/applicant completes the subdivision.
2. A description of the method which will be employed to provide for the orderly transfer of the ownership of the access way to the above entity/ home owner's association.
3. A copy of a restrictive covenant(s) which shall prohibit further subdivision and shall absolve the Town from any present or future maintenance responsibilities for the private way.

#### **8.2.8 Special Permit Decision.** Before acting on a Special Permit application, the Planning Board shall conduct a public hearing in accordance with the provisions of these By-Laws.

1. The Planning Board may grant a Special Permit under this Section 8.2 only if it finds

that: the proposed Residential Compound will be in harmony with this Section; that it will be of a benefit to the community; that it will utilize the site in a more environmentally suitable manner than a conventional plan for the site; and that the number of lots shown is less than that allowed under a conventional plan. The burden of proof shall be upon the applicant in determining the allowable number of building lots. The Planning Board reserves the right to challenge the status of any lot.

2. The Planning Board may impose any conditions, and/or safeguards that further the purpose of this Section 8.2.
3. A condition of the Special Permit shall be the recording of the required covenant at the Norfolk County Registry of Deeds.
4. No certificates of occupancy shall be issued by the Building Commissioner until the Planning Board has certified that the site has been constructed in accordance with the approved plan and that the required documentation is in place for the private way to be maintained as a private way.
5. For the purposes of the Special Permit lapse provision found in Section 10.4.6 of these By-Laws, the recording of the approved definitive subdivision plan with the Norfolk County Registry of Deeds or Registry District of the Land Court authorizing the construction of a way for a Residential Compound shall be considered substantial use of the Special Permit granted under this Section. The Planning Board has the discretion to regulate the time to complete the subdivision through the required covenant.

**8.2.9 Revisions to Special Permit.** Subsequent to the granting of a Special Permit, the Planning Board may permit the relocation of lot lines within the Residential Compound; provided that any changes in overall density or street layout will require further review and a public hearing.

### **8.3 OPEN SPACE RESIDENTIAL DEVELOPMENT**

**8.3.1 Purpose.** The purpose of this Section 8.3 is:

1. To permit maximum flexibility and creativity in design for the development of single- family subdivisions that will be superior to conventional plans;
2. To promote the most harmonious use of the land's natural features, resources and topography, which will promote the general health and safety of the public;
3. To discourage sprawled development, minimize environmental disruption, and provide a shorter network of streets and utilities which will promote a more efficient distribution of services; and
4. To encourage the preservation of open space by permanently preserving open and wooded areas within the parcel.

**8.3.2 Special Permit Required.** Open Space Residential Development may be authorized only by a Special Permit as granted by the Planning Board.

### 8.3.3 General Requirements.

1. Tracts of land consisting of a minimum of seven and one-half (7.5) acres may be developed as an Open Space Residential Development (OSRD)
2. The number of building lots may not exceed the number of building lots of the tract as permitted by Board of Health and Conservation Commission regulations, existing zoning and a conventional subdivision per the Foxborough Subdivision Regulations (“subdivision regulations”).
3. For parcels situated in a Primary Resource Area, the maximum number of building lots allowed in the Special Permit definitive plan filing shall be determined by compiling the total sewage flow allowed for the total upland area within each of the building lots as approved in the conventional, preliminary plan. Minimum lot sizes of 30,000 square feet of upland area shall be required in these areas.
4. For parcels situated in Zone III of the Water Resource Protection Overlay District (WRPOD) the maximum number of building lots allowed in the Special Permit definitive plan filing shall be determined by compiling the total sewage flow allowed within each of the building lots as approved in the conventional, preliminary plan. Minimum lot sizes of 20,000 square feet shall be required in these areas.
5. All lots and structures shall comply within the dimensional requirements of Table 8-1. Whenever possible, the Planning Board will require septic systems and housing units to be located outside of those areas protected by the WRPOD Zone II regulations.

### 8.3.4 Dimensional and Design Requirements.

<b>Table 8-1 OSRD DIMENSIONAL REGULATIONS</b>							
<b>Min. Lot Dimensions</b>	<b>Minimum Yard Dimensions</b>		<b>Minimum Distance Between Structures (ft.)</b>			<b>Maximum Building Height</b>	
	<b>Square Feet</b>	<b>Feet</b>					
<b>District</b>	<b>Area</b>	<b>Frontage</b>	<b>Front</b>	<b>Side</b>	<b>Rear</b>	<b>Stories</b>	<b>Feet</b>
R-40	20,000	50	20	15	25	2.5	35
<b>Minimum Requirements within Zone II of the WRPOD</b>							
R-40	30,000	50	20	15	25	2.5	35

1. The requirements noted in Table 8-1 shall apply to all lots and dwelling units located within an OSRD. All accessory structures and uses shall comply with the requirements of Section 4 of these By-Laws unless otherwise provided for herein. Within those areas governed by the WRPOD Zone II regulations, the minimum building lot area shall be “upland” as defined in Massachusetts General Laws, Chapter 131. Each dwelling unit shall have sufficient parking for two (2) vehicles.
2. Lots approved at the preliminary plan stage may be located on existing streets in the Special Permit filing and shall comply with the requirements of Table 8-1.

3. Strong emphasis shall be placed upon preserving and integrating the existing topography, natural features (such as rock outcrops, specimen trees and clumps of trees) and man-made features such as stone walls into the plan.
4. The Planning Board may place limitations on the types and location of accessory structures which may be located within the buffer strips. Existing/proposed screening, distances between the OSRD and existing abutters, and topography shall all be considered. The intent is to minimize impacts on existing abutters. A deed restriction may be required if such limitations are applied.
5. Swimming pools may not be located within thirty (30) feet of a property line of an existing single-family dwelling abutting the OSRD. The Planning Board may increase this distance after considering those items noted in subsection 4, above.

**8.3.5 Screening and Buffering.** The intent of this provision is to ensure and preserve the visual privacy between abutting dwellings and new lots within the OSRD. To accomplish this, fifty (50) feet of screening & buffering is required in those locations where dwellings abut the OSRD. This is in addition to the required twenty-five (25) feet of dedicated open space. The Board may alter the width of this screening if it determines that the existing vegetation and/or topography, or the proposed method of screening fulfills the intent of these requirements. The distance between existing homes and the OSRD shall also be considered.

1. Screening/buffering may consist of landscaped berms, evergreen plantings, solid walls or fences complemented by suitable plantings, “no cut” provisions (for existing vegetation), or a combination of these items.
2. Buffer strips(s) on individual building lots shall have a written deed restriction permanently preserving such. This document shall be submitted for review by the Planning Board and recorded at the Norfolk County Registry of Deeds with any approval.
3. In those situations where the width of the screening/buffering is reduced, plantings and/or landscaped berms may be located within the dedicated open space. No walls or fences shall be allowed within the dedicated open space.
4. The exact location of the screening/buffering and species type(s) of vegetation shall be noted on the definitive plan. All new plantings shall consist of evergreens and be situated in a manner acceptable to the Planning Board

**8.3.6 Dedicated Open Space.**

1. A minimum of forty-five (45%) percent of the parcel shall become dedicated open space pursuant to Massachusetts General Laws, Chapter 40A, Section 9. It shall not include land for paved parking lots, roads or for building lots. The Planning Board may reduce this figure to a minimum of thirty five (35%) percent if it determines there are unique circumstances (re: shape of parcel, topography, wetlands, etc.) that would individually or together preclude the construction of the OSRD.
2. The minimum width of dedicated open space between abutting property and the OSRD shall be twenty-five (25) feet. Other than new screening/buffering, this area

shall remain in a natural state. The Planning Board may increase the width of this dedicated open space. When considering such, it shall review, among other things, the width of the required buffer strip, the density and type of existing vegetation, the location of, distance and topography between existing structures abutting the OSRD.

3. Unless required by the Planning Board, dedicated open space is not required between an existing dwelling(s) which is located within the OSRD and parcels abutting the OSRD.
4. Areas that have been designated as unsuitable for building per Massachusetts General Laws, Chapter 131, Title V, or Zone A1 through the National Flood Insurance Program, or otherwise may be included in the dedicated open space; provided, that a minimum of seventy (70%) percent of the required, dedicated open space shall consist of upland areas.
5. Dedicated open space may be utilized as natural courses for disposal for storm drainage from impervious surfaces. Other than minor berming (maximum 3-1 slopes which shall blend into the landscape) and riprap at pipe outflows, no significant disruptions of the land (contour changes greater than three (3) feet) for drainage are permitted.
6. Dedicated open space may be in one or more parcels of a size and shape appropriate for its intended use. The parcels shall be laid out to promote convenient access by the homeowners within the OSRD, the general public or both, whatever the case may be. Wherever practical, parcels shall be accessible via upland areas. These items shall be agreed upon by the Planning Board and applicant.

#### **8.3.7 Ownership of Dedicated Open Space.**

1. As agreed upon by the applicant and the Board, dedicated open space shall either be conveyed to the Town and accepted by it for park or open space, or be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space, or to be conveyed to a corporation or trust owned or to be owned by the owners of all building lots within the development. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units. In any case, where such land is not conveyed to the Town, a restriction enforceable by the Town pursuant to Massachusetts General Laws, Chapter 40A, Section 9, shall be recorded providing that such land shall be kept in an open natural state and not be developed or built upon.
2. If necessary, such restrictions shall further provide for maintenance for the common land in a manner which will ensure its suitability for its function, appearance, cleanliness, and proper maintenance of drainage, utilities, and the like.
3. Subject to the above, the dedicated open space may be kept in an open and natural state or may be used for recreational uses including, but not limited to, golf courses, riding trails, athletic fields or gardens.

**8.3.8 Special Permit Application and Filings.** A Special Permit application for an OSRD shall include a definitive subdivision plan with eleven (11) copies. It shall be prepared in accordance with Section 3.02 of the Foxborough Subdivision Regulations. In addition,

the applicant shall provide the following information:

1. A detailed analysis of the site, including wetlands, soil conditions, areas within the one hundred (100) year flood plain, trees over six (6) inches in diameter in areas identified by the Planning Board, Water Resource Protection Overlay District delineation and natural, and/or man-made features and other items as the Planning Board may request;
2. A description of the proposed design characteristics of the site pursuant to these regulations;
3. Engineering data showing effects of proposed development on both on and off-site water resources (within one hundred (100) feet of the property line) wetlands and natural recharge of the groundwater, yield from abutters' private wells and possible impacts upon the quality of surface and groundwater;
4. A copy of any restrictive covenant(s) for the required buffer strips, association rules and regulations and/or other documentation relating to the creation of a Homeowners Association or similar entity.

**8.3.9 Application Process.** A pre-application review and public hearing are required. The intent of such is to allow the Town the opportunity to discuss with the applicant and review each proposal prior to the Special Permit process. After the pre-application review, an applicant may then proceed to the Special Permit process. A pre-application review will be conducted in accordance with the following procedure:

1. An application, a preliminary set of plans, illustrating a conventional subdivision plan and proposed OSRD shall be filed with the Foxborough Town Clerk and the Planning Board. The application shall be accompanied by eleven (11) copies of the plans and any other supporting materials, which must be prepared and stamped by a registered, professional architect, civil engineer or landscape architect. This submittal shall comply with Section 3.01 of the Subdivision Regulations.
2. The plan shall be used by the Planning Board to determine the maximum number of lots which could be created via a conventional plan. This number will be the maximum allowed in an OSRD definitive subdivision plan submittal.
3. The burden of proof shall be upon the applicant to prove the proposed lot(s) are suitable for building. The Planning Board reserves the right to challenge the status of any lot and not allow such to be included in any definitive plan filing.
4. Formal percolation and depth to groundwater tests shall be conducted for each building lot unless town sewerage is available. The results of these tests shall be submitted with the application. Due to seasonal testing requirements, the Planning Board may accept an application without these certified tests. However, the applicant would proceed at his or her own risk and no development of a building lot could commence until it has been approved by the Board of Health.
5. A preliminary sketch plan of the proposed OSRD shall be submitted. It shall contain the proposed location of the road(s), lots, drainage, and dedicated open space. General topography, (with ten (10) foot contours) major site features and adjacent



streets shall also be shown.

6. The Planning Board shall hold a public hearing and act on the preliminary plan within forty-five (45) days after the receipt of the application.
7. The conceptual OSRD shall also be reviewed and discussed during the hearing process. Comments and recommendations shall be incorporated in plans included in any subsequent filings.
8. If the preliminary conventional and conceptual OSRD plans are approved, the Planning Board shall, insofar as practical under the law, allow the submittal of a combined Special Permit and definitive subdivision plan. A combined submission will not be authorized in those cases where either the conventional preliminary plan or proposed OSRD sketch plan is not approved by the Planning Board.

#### **8.3.10 Special Permit Decision.**

1. The Planning Board shall conduct a public hearing in accordance with the provisions of these By-Laws.
2. The Planning Board may grant a Special Permit under this Section 8.3 only if it finds that the proposed plan will be in harmony with the intent and requirements of this Section and these By-Laws, and that the development will not have a detrimental impact on the neighborhood or abutting properties.
3. If the Planning Board disagrees with any recommendations of another Town of Foxborough Board, it shall state its reasons therefor in writing.
4. The Planning Board may impose conditions as a part of any approval that further the purposes of this Section 8.3 and these By-Laws.
5. The Planning Board shall require a performance guarantee to secure the proper completion of all infrastructure as well as the fulfillment of any conditions of approval.

**8.3.11 Revisions to Special Permit.** Subsequent to granting of a Special Permit, the Planning Board may permit the relocation of lot lines or changes to landscaping within the project; provided, that any change in the number of lots, street layout, square footage or composition of dedicated open space or disposition thereof, will require further review and a public hearing.

### **8.4 PLANNED DEVELOPMENT HOUSING**

**8.4.1 Minimum Parcel Size.** All Planned Development Housing (PD-H) shall occur on parcels with a minimum of two hundred (200) acres and one hundred (100) feet of frontage within the R-40 Residential District.

**8.4.2 Computation of Dwelling Units.** One (1) dwelling unit shall be permitted for every 40,000 square feet of area. This figure shall be attained by using the gross square footage of the parcel.

- 8.4.3 Number of Bedrooms.** The gross number of bedrooms within the Planned Development shall not exceed twice the number of dwelling units permitted. Within each Planned Development, not more than ten (10%) percent of the permitted dwelling units shall contain three (3) or more bedrooms. Single-family units are exempt from this three (3) bedroom limitation; however, the limitation on the gross number of bedrooms within the PD-H shall still remain in effect.
- 8.4.4 Open Space.** Twenty-five (25%) percent of the parcel shall remain as open space.